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Nos. 95-1858, 96-110



IN THE

# Supreme Court of the United States

OCTOBER TERM, 1996

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DENNIS C. VACCO, Attorney General of the State of New York; GEORGE E. PATAKI, Governor of the State of New York; and ROBERT M. MORGENTHAU, District Attorney of New York County,

*Petitioners,*

v.

TIMOTHY E. QUILL, M.D.; SAMUEL C. KLAGSBRUN, M.D.; and HOWARD A. GROSSMAN, M.D.,

*Respondents.*

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STATE OF WASHINGTON and CHRISTINE O. GREGOIRE, Attorney General of Washington,

*Petitioners,*

v.

HAROLD GLUCKSBERG, M.D., ABIGAIL HALPERIN, M.D., THOMAS A. PRESTON, M.D., and PETER SHALIT, M.D., PH.D.,

*Respondents.*

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**On Writs of Certiorari to the United States Courts of Appeals for the Second and Ninth Circuits**

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## BRIEF OF 36 RELIGIOUS ORGANIZATIONS, LEADERS AND SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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The Board of Directors of The Society for Humanistic Judaism
The Cathar Church
The Congress of Secular Jewish Organizations
The Episcopal Diocese of Newark
The Unitarian Universalist Association
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The Reverend Doctor Robert McAfee Brown
Rabbi Denise L. Eger
The Reverend Doctor Lawrence Falkowski
The Reverend Dunne Henry Fickeisen
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The Reverend Herbert F. Schmidt
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The Reverend Deborah Streeter
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The Reverend Judith Clymer Welles
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## INTEREST OF THE AMICI*

*Amici* are a diverse array of religious organizations, leaders, and scholars as well as advocates of religious liberty.[1] They have in common their dedication to the personal liberties and religious freedoms of all Americans as well as their concern for the plight of the terminally ill. Many of the individual *amici* counsel and comfort terminally ill people, and are thus familiar with their physical, emotional, and spiritual suffering and their struggle over the intensely personal decision to hasten an inevitable death. This decision implicates issues of great spiritual significance — issues that are not viewed in the same manner by all religious denominations or their adherents.

The interest of *amici* in these cases is to ensure that terminally ill Americans of all faiths are free to make decisions about the time, place, and manner of death that reflect their personal understanding of life's meaning, reduce the suffering of their bodies and their minds, and conform to their own ethical and spiritual values. While the government may properly regulate this choice to assure that it is truly voluntary and informed, the government may not proscribe the choice altogether, which would undermine the interests protected by the Free Exercise and Establishment Clauses of the First Amendment as well as the liberty component of the Fourteenth Amendment's Due Process Clause.

## SUMMARY OF ARGUMENT

The right of a competent, terminally ill individual to end his or her life with the aid of a physician is one of the most important liberties protected by the Due Process Clause. That much is clear from *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), in which this Court endorsed the second Justice Harlan's vision of the liberty guaranteed by the Due Process Clause. Justice

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* Counsel for both petitioners and respondents have consented to the filing of this brief *amici curiae*. Their consents are on file with the Clerk of the Court.

[1] *Amici* are described in greater detail in the Appendix to this brief.

Harlan's analysis, articulated most forcefully in his dissenting opinion in *Poe v. Ullman,* 367 U.S. 497, 543 (1961), requires courts — using "a reasonable and sensitive judgment" — to determine where, along the "rational continuum" of liberties from the most insignificant to the most fundamental, a particular interest lies. In making these judgments, courts should consider not only the liberties guaranteed by the text of the Constitution, but also the "purposes of those guarantees and . . . the reasons for their statement by the Framers." *Id.*

*Amici* urge that physician-assisted suicide is one of the most important liberties protected by the Due Process Clause, implicating as it does "the right to define one's own concept of . . . the mystery of human life." *Casey,* 505 U.S. at 851. Our long tradition of individual religious liberty and government noninterference with religious decisions, exemplified by the religion clauses of the First Amendment, serves to confirm that the "perplexing question" of physician-assisted suicide, with its "unusually strong moral and ethical overtones," *Cruzan v. Director, Missouri Dep't of Health,* 497 U.S. 261, 277 (1990), is an intimate, personal, and ultimately spiritual decision appropriately reserved to the individual's own conscience.

The purposes and reasons behind the Free Exercise Clause bear this out. The many diverse religious faiths represented in this country have many diverse views on the theological and moral propriety of physician-assisted suicide. Some religious denominations absolutely oppose physician-assisted suicide in all instances. Others, while stating no formal church position, have taken the position that an individual's decisions about death should be honored. Still others affirmatively support "the right to self-determination in dying." In the light of this diversity of religious views on the subject, the Due Process Clause's liberty guarantee should be understood to protect a competent, terminally ill adult's decision to end his or her life (or not) with the aid of a physician, just as the Free Exercise Clause protects an individual's right "to maintain theories of life and of death and of the hereafter." *United States v. Ballard,* 322 U.S. 78, 86 (1944).



Similarly, because the common-law's historical bans upon suicide are rooted in the incorporation of Roman Catholic canon law into the English common law, laws banning physician-assisted suicide raise serious Establishment Clause concerns. Laws that endorse one religious view over others, and have overtly religious purposes, are irreconcilable with the values underlying the Establishment Clause. *Lee v. Weisman,* 505 U.S. 577, 587-88 (1992); *Edwards v. Aguilard,* 482 U.S. 578, 592-93 (1987).

Finally, the Washington and New York bans upon physician-assisted suicide cannot survive the "particularly careful scrutiny" — that is, strict scrutiny — required by the Due Process Clause. *Casey,* 505 U.S. at 848-51. While state regulations designed to assure competence and voluntariness might be appropriate, these states' total bans upon this right are not the least restrictive means for furthering any compelling state interest.

## ARGUMENT

This Court has endorsed the second Justice Harlan's vision of the substantive liberty guarantee of the Fourteenth Amendment's Due Process Clause. *See, e.g., Planned Parenthood v. Casey,* 505 U.S. 833 (1992). Justice Harlan recognized that the Due Process Clause requires courts to balance, carefully, the two primary — yet often conflicting — aspirations of a free society: the "liberty of the individual," on the one hand, and "the demands of organized society," on the other. *Poe v. Ullman,* 367 U.S. 497, 542 (1961) (Harlan, J., dissenting); *see also Casey,* 505 U.S. at 850; *Rochin v. California,* 342 U.S. 165, 171-72 (1952).[2]

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[2] This accommodation of individual and state interests allows for a wide range of legitimate regulation. Only as the burden imposed on a protected right becomes increasingly direct and substantial must the asserted state interest be strong and the regulation narrowly tailored to serve that interest. Accordingly, although all infringements of protected liberties are subject to a careful balancing of the individual's interest against the government's interest, strict scrutiny applies only when the government unduly burdens or proscribes a protected right. *Planned*

The end result of this balancing is clear in these cases: A competent, terminally ill person's ability to choose to hasten his or her death is a constitutionally protected "liberty of the individual," which is derived not only from the "liberty" component of the Due Process Clause but also from the religion clauses of the First Amendment. The "demands of organized society" do not justify the absolute bans imposed on this liberty by Washington and New York.

## I. THE WASHINGTON AND NEW YORK BANS ON PHYSICIAN-ASSISTED SUICIDE BURDEN CORE LIBERTY INTERESTS PROTECTED BY THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT AND THE RELIGION CLAUSES OF THE FIRST AMENDMENT

The term "liberty" in the Fourteenth Amendment's Due Process Clause is, admittedly, broad, encompassing every "liberty" from the most insignificant to the most fundamental. *See Poe*, 367 U.S. at 543 (Harlan, J., dissenting) (observing that liberty encompasses, at a minimum, "freedom from all substantial arbitrary impositions and purposeless restraints") (citing cases). As this Court recently reiterated in *Casey*, it is the task of judges, using "'a reasonable and sensitive judgment,'" to determine where along that "'rational continuum'" a particular liberty lies. 505 U.S. at 848 (quoting *Poe*, 367 U.S. at 543 (Harlan, J., dissenting)). The more fundamental the liberty interest, the more "careful scrutiny" must be given "the state needs asserted to justify [its] abridgement." *Poe*, 367 U.S. at 543 (Harlan, J., dissenting).

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*Parenthood v. Casey*, 505 U.S. 833, 873-75 (1992); *Poe v. Ullman*, 367 U.S. 497, 548-49 (1961) (Harlan, J., dissenting); *see generally* Note, *Who Decides If There Is "Triumph in the Ultimate Agony?" Constitutional Theory and the Emerging Right To Die with Dignity*, 37 Wm. & Mary L. Rev. 827 (1996) (providing an extended analysis of Justice Harlan's approach as applied to physician-assisted suicide).



As Justice Harlan explained, in assessing whether and to what extent an asserted liberty interest merits constitutional protection, the courts must

> hav[e] regard to what history teaches are the traditions from which [the asserted interest] developed as well as the traditions from which it broke. That tradition is a living thing. A decision of this Court which radically departs from it could not long survive, while a decision which builds on what has survived is likely to be sound.

*Id.* at 542. It is thus clear that courts are not precluded from recognizing even "an apparently novel claim" of a liberty interest, so long as the claim "depend[s] on grounds which follow from well-accepted principles and criteria." *Id.* at 544. In other words, the newly recognized liberty interest must "take 'its place in relation to what went before and further [cut] a channel for what is to come.'" *Id.* (quoting *Irvine v. California*, 347 U.S. 128, 147 (1954) (Frankfurter, J., dissenting)).

The liberties secured by the Bill of Rights necessarily qualify as "well-accepted principles," *Poe*, 367 U.S. at 543-44 (Harlan, J., dissenting), but the "liberty" embraced by the Fourteenth Amendment is broader than the mere text of those guarantees. "[I]t is the purposes of those guarantees and not their text, the reasons for their statement by the Framers and not the statement itself, . . . which have led to their present status in the compendious notion of 'liberty' embraced in the Fourteenth Amendment." *Id.* at 544 (Harlan, J., dissenting); *see also Palko v. Connecticut*, 302 U.S. 319, 324-27 (1937); *United States v. Carolene Products Co.*, 304 U.S. 144, 152-53 (1938).

As we show below, a terminally ill individual's ability to choose physician-assisted suicide "follow[s] from well-accepted principles and criteria," *Poe*, 367 U.S. at 544 (Harlan, J., dissenting), which derive both from the First Amendment's protection of religious freedom and from the Fourteenth Amendment's proscription of undue government interference in intimate, personal, and spiritual decisions.

### A. The Interests Reflected In The Free Exercise Clause And The Liberty Component Of The Due Process Clause Establish That Physician-Assisted Suicide Is A Core Constitutionally Protected Liberty

#### 1. Religious Organizations And Religious Leaders Have Taken A Wide Array Of Positions On The Morality Of Physician-Assisted Suicide

It should be emphasized at the outset that there is "no monolithic 'religious' position on the question of the morality or legality" of assisted suicide. G. Larue, *Playing God — 50 Religions' Views on Your Right to Die* 8 (1996); Campbell, *Religious Ethics and Active Euthanasia in a Pluralistic Society*, 2 Kennedy Inst. of Ethics J. 253, 253-54 (1992).[3] Rather, a "diversity of religious argumentation" exists about whether an individual may morally and ethically choose physician-assisted suicide. Campbell, 2 Kennedy Inst. of Ethics J. at 254.[4] The controversy surrounding physician-assisted suicide is, therefore, not merely "a clash of religious versus secular ethics." *Id.* Indeed, the intense debate over this issue — both among and within religious denominations — underscores that assisted suicide is, for many people, a religious question.[5]

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[3] *See also* Note, *Assisted Suicide and Religion: Conflicting Conceptions of the Sanctity of Human Life*, 84 Geo. L.J. 589, 596-601 (1996).

[4] Religious communities are also debating whether the term "suicide" should properly be used to refer to the informed and voluntary decision of a competent, terminally ill individual to hasten death with physician assistance. *See Compassion in Dying v. Washington*, 79 F.3d 790, 808 (9th Cir.) (*en banc*), *cert. granted*, 117 S. Ct. 37 (1996).

[5] Even within religious denominations that institutionally oppose physician-assisted suicide, many of their members may personally hold a different view, which they believe to be consistent with their own religious beliefs. *See* G. Larue, *Playing God — 50 Religions' Views on Your Right to Die* 8 (1996); Campbell, *Religious Ethics and Active Euthanasia in a Pluralistic Society*, 2 Kennedy Inst. of Ethics J. 253, 255-56 (1992) (citing a study finding that 70-80% of those affiliated with the major religions supported physician-assisted suicide).



The Roman Catholic Church, to be sure, has been "the sternest, most vigilant, and no doubt most effective opponent of euthanasia." R. Dworkin, *Life's Dominion* 195 (1993). Several other Christian denominations — but by no means all of them — have adopted "official" church positions against the morality of physician-assisted suicide. *See generally* G. Larue, *Euthanasia and Religion: A Survey of the Attitudes of World Religions to the Right-to-Die* 26-117 (1985) (surveying various Christian denominations). Those Christian denominations that oppose physician-assisted suicide do so on two theological grounds: first, that physician-assisted suicide violates the Commandment that "thou shalt not kill," and second, "'that suffering is often sent by God for the remission of sins and the salvation of our souls; so if God has sent someone pain which cannot be alleviated by normal means (pain-killer shots, etc.), we must resign ourselves in the knowledge that this pain is necessary and inevitable.'" *Id.* at 55-56 (quoting Russian Orthodox Archpriest A. Mileant). It is thus acknowledged, even by opponents of physician-assisted suicide, that the suffering of terminally ill people has a spiritual dimension.[6]

These are not the only religious positions, however, on whether the terminally ill may choose to hasten death with physician assistance. The Episcopal Church, for instance, "has not formulated and published any official position on the questions surrounding euthanasia," explaining that to do so would "presuppos[e] a kind of authority of theological teaching and writing which is not relevant in the Episcopal Church." G.

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[6] *See* Campbell, 2 Kennedy Inst. of Ethics J. at 268-69 (quoting the Catholic teaching that "'suffering during the last moments of life . . . is in fact a sharing in Christ's passion'"); Episcopal Diocese of Washington, D.C., Committee on Medical Ethics, *Are Assisted Suicide and Euthanasia Morally Acceptable for Christians? Perspectives to Consider* 12-13 (1996) (noting Christian views of the spiritual significance of suffering).

Larue, *Euthanasia and Religion, supra,* at 58 (quotation omitted). *Amicus* Episcopal Diocese of Newark thus appointed a Task Force on Assisted Suicide to study the issue in conjunction with the teachings of the Episcopal Church. The Task Force concluded that physician-assisted suicide "can be theologically and ethically justified" when a terminally ill person makes a voluntary and informed choice after all reasonable means of ameliorating his or her suffering have been exhausted.[7]

The United Church of Christ, the United Methodist Church, and the Presbyterian Church, among others, likewise have not adopted any formal position on physician-assisted suicide. A number of these denominations have taken the position more generally, however, that "basic Christian respect for persons demands that a person's decisions about death be honored in most instances."[8] These denominations encourage their members to offer compassion and understanding — rather than moral absolutes — to terminally ill individuals who are faced with the difficult choice whether to end their own lives.[9] In accordance with this teaching, the Pacific Northwest Conference of the United Methodist Church supported Washington Initiative 119, which would have recognized a right to physician-assisted suicide

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[7] Episcopal Diocese of Newark Task Force on Assisted Suicide, *Report* 9 (1996).

[8] Presbyterian Church (U.S.A.), Christian Faith and Life Area, Congregational Ministries Division, *In Life and Death We Belong to God: Euthanasia, Assisted Suicide, and End-of-Life Issues* 47 (1995) (citing 195th General Assembly position on "The Covenant of Life and the Caring Community" (1983)); *see also* United Church of Christ, The Council for Health and Human Service Ministries, *Making End-of-Life Decisions: United Church of Christ Perspectives* 24 (1993) (supporting "the right and responsibility of individuals to choose their own destiny" as well as "the rights of individuals, their designees and their families to make decisions regarding human death and dying").

[9] *See* United Church of Christ, *Making End-of-Life Decisions* at 24; United Methodist Church, *Book of Resolutions* 144 (1992).



in some circumstances. Campbell, 2 Kennedy Inst. of Ethics J. at 261.

The reformed and humanistic branches of Judaism also teach sympathy, understanding, and respect for those who choose assistance in hastening death. *See* G. Larue, *Playing God, supra,* at 62-65. Some Jewish organizations, including two of the *amici* here, take the position that a competent, terminally ill adult has the right to voluntarily hasten death with the aid of a physician. *See id.* at 64-66; *see also id.* at 56 (reprinting rabbi's statement with respect to Washington Initiative 119 that "[s]ometimes in a medical setting human freedom needs to be exercised resolutely to bring life to an end").

Still other religions have taken more formal institutional positions supporting the right to physician-assisted suicide. The General Assembly of *amicus* Unitarian Universalist Association supports "the right to self-determination in dying, and the release from civil or criminal penalties of those who, under proper safeguards, act to honor the right of terminally ill patients to select the time of their own deaths."[10] *Amicus* Cathar Church, which is Evangelical in doctrine and has some similarity to the Amish and Mennonites, has taught for several centuries that decisions regarding the time and manner of death are matters of individual conscience best left to the individual and his or her God. Many Eastern religions also support a choice of physician-assisted suicide in certain circumstances. *See* Note, *Assisted Suicide and Religion: Conflicting Conceptions of the Sanctity of Human Life,* 84 Geo. L.J. 589, 597 (1996).

As the foregoing discussion demonstrates, the religious community is sharply divided, on theological and ethical grounds, as to the propriety of physician-assisted suicide. This confirms the correctness of this Court's observation in *Cruzan v. Director, Missouri Dep't of Health,* 497 U.S. 261, 277 (1990), that "all

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[10] General Assembly of the Unitarian Universalist Association of Congregations, *The Right to Die with Dignity* (1988).

agree" that an individual's decision to hasten death "is a perplexing question with unusually strong moral and ethical overtones." The Washington and New York statutes, however, dictate only one answer to that "perplexing question" to persons of all religious faiths.

### 2. A Terminally Ill Person's Decision To Hasten Death Is The Sort Of Personal, Intimate, Often Spiritual Decision To Which The First And Fourteenth Amendments Afford Protection

This Court has recognized in many diverse contexts that each individual should be allowed to define for himself or herself what constitutes a meaningful existence. The Due Process Clause has thus been held to protect "personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education." *Casey*, 505 U.S. at 851. Similarly, the First Amendment freedoms have been recognized to occupy a "preferred position in our basic [constitutional] scheme," *Prince v. Massachusetts*, 321 U.S. 158, 164-65 (1944) because "under their shield many types of life, character, opinion and belief can develop unmolested and unobstructed." *Cantwell v. Connecticut*, 310 U.S. 296, 310 (1940).[11] At the heart of individual liberty, therefore, is "the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." *Casey*, 505 U.S. at 851; *see generally Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting) ("The makers of our Constitution . . . recognized the significance of man's spiritual nature . . . [and] knew that only a part of the pain,

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[11] *See also Doe v. Bolton*, 410 U.S. 179, 211 (1973) (Douglas, J., concurring) (recognizing the importance of preserving an individual's "autonomous control over the development and expression of one's intellect, interests, tastes, and personality"); Heymann & Barzelay, *The Forest and the Trees:* Roe v. Wade *& Its Critics*, 53 B.U. L. Rev. 765, 773 (1973) (noting "[t]he similarity of the protected rights in the areas of marriage, procreation and child rearing to the expressly protected rights in the areas of religion").



pleasure, and satisfactions of life are to be found in material things.").

A terminally ill person's decision to hasten death is a deeply personal, intimate, and often spiritual one, which is made only after solemn reflection, meditation, or prayer, and after consultation with doctors, family, and clergy.[12] It is a decision that raises "profound issues of human meaning and purpose, of identity and destiny" — issues that "strike to the very core of our being and integrity as persons." Campbell, 2 Kennedy Inst. of Ethics J. at 275; *see Cruzan*, 497 U.S. at 343 (Stevens, J., dissenting) ("[o]ur ethical tradition has long regarded an appreciation of mortality as essential to understanding life's significance"). We frequently turn to religion when we are confronted by these sorts of issues: people "expect from the various religions answers to the riddles of the human condition: . . . What is the meaning and purpose of our lives? . . . What are death, judgment, and retribution after death?" *United States v. Seeger*, 380 U.S. 163, 182 (1965). Indeed, "not much may be said with confidence about death unless it is said from faith." *Cruzan*, 497 U.S. at 343 (Stevens, J., dissenting).

It has thus been recognized that "religion lies at the very heart of" a terminally ill person's decision whether to hasten death. Note, 84 Geo. L.J. at 589.[13] The decision implicates attitudes

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[12] *See, e.g.*, Presbyterian Church (U.S.A.), *In Life and Death We Belong to God* at 43 (the decision to commit physician-assisted suicide should be made "thoughtfully and prayerfully, in collaboration with knowledgeable persons not emotionally captured by the situation"); G. Larue, *Euthanasia and Religion: A Survey of The Attitudes of World Religions to the Right-to-Die* 87 (1985) (quoting the United Methodist Church General Council's 1980 statement on Death With Dignity as recognizing the "agonizing personal and moral decisions faced by the dying, their physicians, their families, and their friends").

[13] *See* United Church of Christ, *Making End-of-Life Decisions* at 5 (noting the "intricacies of religious, medical, social, and emotional factors" in each case of terminal illness).

that, for many, are deeply rooted in their religious faith, including attitudes about self-definition, self-determination, and suffering.

Many individuals view their decisions about matters of personal "identity and destiny" as inherently religious ones. As one Protestant religious leader has put it, "the Christ experience is nothing less than our call to be who we are," so "I worship . . . Jesus when I claim my own being and live it out courageously."[14] A number of religious organizations have recognized that dying and death provide terminally ill individuals with a final opportunity to "claim [their] own being," consistent with their own philosophical, ethical, and spiritual attitudes about "human meaning and purpose." *See* Campbell, 2 Kennedy Inst. of Ethics J. at 275 ("our concern about dying well is integral to an understanding of how we might live a rich, meaningful life").[15] For example, "[s]ome persons in terminal conditions long for death as a means of being embraced by the divine," and thus may seek a voluntarily hastened death as a means of "profoundly exercis[ing] their faith when that may be the most meaningful act of creation available to them." G. Larue, *Playing God, supra* at 396 (reprinting report of Greater Seattle Council of Churches). Other terminally ill persons may decide that continuing to exist only with a body racked by pain, or a mind numbed by sedatives, strips them of their personhood. Still others may not want to be remembered in their present condition

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[14] Bishop J.S. Spong, *Rescuing the Bible from Fundamentalism: A Bishop Rethinks the Meaning of Scripture* 242 (1991).

[15] *See* United Church of Christ, *Making End-of-Life Decisions* at 5 (1993) ("The responsibility for life and death is a sacred one, and God calls on us to face up to our freedom of choice."); Episcopal Diocese of Washington, D.C., *Are Assisted Suicide and Euthanasia Morally Acceptable for Christians?* at 21 (noting the view that "Christians have distinctive and compelling reasons for taking these claims of autonomy with great seriousness," because "[w]e are created in the image and likeness of God (Genesis 1: 26-37)" and "[a]n essential part of that image is our ability to make free choices").



"after [their] death by those whose opinions mattered to [them]." *Cruzan*, 497 U.S. at 344 (Stevens, J., dissenting).[16]

There is a spiritual dimension, as well, to individuals' attitudes toward suffering and whether to seek final relief from suffering. With respect to a similarly difficult and intimate issue, this Court observed in *Casey* that the "suffering" endured by a pregnant woman — ranging from "anxieties, to physical constraints, to pain that only she must bear" — is "too intimate and personal for the State to insist" that she continue her pregnancy to term. *Casey*, 505 U.S. at 852. A woman's decision whether to continue or end a pregnancy must, therefore, "be shaped to a large extent on her own conception of her spiritual imperatives." *Id.* The same logic applies to decisions to end one's "suffering" from a terminal illness by hastening one's death; few decisions are more "intimate and personal," and few are more shaped by

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[16] Contrary to the claims of some other religious *amici* (*see, e.g.*, National Catholic Office & Knights of Columbus Br. 4; United States Catholic Conference *et al.* Br. 13-15), physician-assisted suicide may be inextricably intertwined with a terminally ill person's interest in pursuing a meaningful life. The fear of a painful or undignified death may hinder terminally ill individuals from resolving the unsettled aspects of their lives in a meaningful fashion. If such individuals are assured that they may choose the time, place and manner of their death, they are freed to live out their remaining days in a personally meaningful fashion and to come to peace with themselves, with others, and with their God. *See, e.g.*, Quill, Commentary, *Death and Dignity: A Case of Individualized Decision Making*, 324 New Eng. J. Med. 691, 693 (1991) (describing a woman whose fear of a "lingering death" was interfering with her ability to get "the most out of the time she had left"). This is precisely why durable powers of attorney and living wills are recognized and enforced: people benefit in life from knowing that their wishes will be respected at and after death. Stacy, *Death, Privacy, and the Free Exercise of Religion*, 77 Corn. L. Rev. 490, 535 (1992); United Church of Christ, *Making End-of-Life Decisions* at 9 (these devices have "great" benefits: "providing peace of mind for ourselves and our loved ones by making decisions that are in harmony with our faith and our beliefs about stewardship").

an individual's "own conception of [his or] her spiritual imperatives."[17]

The spiritual aspects of suffering differ from one terminally ill individual to another. Some view their suffering as connected with the suffering of Jesus, and thus as a cross that must be borne until God chooses to lift it. *See* Campbell, 2 Kennedy Inst. of Ethics J. at 268-69. For others, however, the suffering and loss of dignity associated with terminal illness is seen *not* as bringing them closer to God, but as distancing them from God. *See* W. Farley, *Tragic Vision and Divine Compassion* 53-59 (1990) (observing that suffering "reduces the capacity of the sufferer to exercise freedom, to feel affection, to hope, to love God").[18] Moreover, as a result of diminished physical capabilities or mental acuity resulting from the illness itself or from pain medications, an individual may lose the ability to pray, to study the teachings of his or her faith, or to interact meaningfully with family, clergy, or members of the religious community. In effect, terminally ill individuals may be forced to exist without their fundamental religious liberties during their final days.

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[17] Some *amici* opposed to physician-assisted suicide have focused on the physically painful nature of terminal illness, which they contend can be treated by proper medication and hospice care. Medication, however, cannot always relieve the pain associated with many terminal illnesses. Moreover, medication can never address an individual's anguish about his or her loss of "personhood," including the loss of physical mobility, mental acuity, emotional connection to other people, and spiritual connection to God. *See* Episcopal Diocese of Washington, D.C., *Are Assisted Suicide and Euthanasia Morally Acceptable for Christians?* at 22; United Church of Christ, *Making End-of-Life Decisions* at 4.

[18] *See also* Episcopal Diocese of Washington, D.C., *Are Assisted Suicide and Euthanasia Morally Acceptable for Christians?* at 22 (noting that suffering "can be destructive of moral and spiritual values and the very dignity with which God has endowed us"); Campbell, 2 Kennedy Inst. of Ethics J. at 269 (suggesting that suffering "presents a threat to the integrity and identity of the self").



Hence, the decision whether to hasten a rapidly impending death will be resolved differently by different individuals, based on their own philosophical, ethical, and religious beliefs. Some will reject physician-assisted suicide as contrary to the teachings of their faith. That decision is, of course, entitled to the utmost respect. Others, however, may conclude that physician-assisted suicide is a morally appropriate choice — perhaps the most morally appropriate choice — in the circumstances according to their understanding of the teachings of their faith. *See, e.g.*, G. Larue, *Playing God, supra,* at 396 (some terminally ill persons view a voluntarily hastened death as a "profoun[d] exercise [of] their faith"); Episcopal Diocese of Newark Task Force on Assisted Suicide, *Report* 9 (1996) (suggesting that there are circumstances in which "involuntary prolonged physical existence is a less ethical alternative than a conscientiously chosen and merciful termination of earthly life").

That decision, too, should be respected by the government. It is a decision that implicates an individual's right under the Free Exercise Clause "to maintain theories of life and of death and of the hereafter." *United States v. Ballard,* 322 U.S. 78, 86 (1944). Just as the Free Exercise Clause protects an individual's right to pursue his or her own understanding of the mysteries of life and death, *see, e.g., id.*, the Due Process Clause should protect an individual's right to make an informed decision whether to continue life in the face of a terminal illness. *See Casey,* 505 U.S. at 851 ("the right to define one's own concept" of, *inter alia*, "the mystery of human life" is "[a]t the heart of liberty"). Like other expressions of belief that emanate from "the kingdom of the individual man and his God," an individual's choice of physician-assisted suicide "should be kept . . . private," not "confounded with what legislatures legitimately may take over into the public domain." *Everson v. Board of Education,* 330 U.S. 1, 57-58 (1947) (Rutledge, J., dissenting).

For these reasons, the Washington and New York statutes are irreconcilable with the motivating spirit of the First and Fourteenth Amendments. Those terminally ill persons whose religions recognize that physician-assisted suicide is an

appropriate ethical and moral choice, or that the determination is best left to the individual's own conscience, are prevented from making this most personal decision in accordance with their "own conception of [their] spiritual imperatives." *Casey*, 505 U.S. at 852.

### B. The Interests Reflected In The Establishment Clause Confirm That Physician-Assisted Suicide Is A Core Constitutionally Protected Liberty

The "purposes" and "reasons" underlying the Establishment Clause provide further support for recognizing physician-assisted suicide as a core constitutionally protected liberty under the Due Process Clause. *See Poe*, 367 U.S. at 542 (Harlan, J., dissenting). State bans on physician-assisted suicide are so akin to a government endorsement of religious doctrine as to raise serious Establishment Clause concerns.

At the core of the Establishment Clause is a prohibition on governmental favoritism of a particular religion or of religion generally: "A proper respect for both the Free Exercise and the Establishment Clauses compels the State to . . . favo[r] neither one religion over others nor religious adherents collectively over nonadherents." *Board of Education of Kiryas Joel Village School Dist. v. Grumet*, 114 S. Ct. 2481, 2487 (1994) (citation and internal quotation omitted). This Court has thus carefully scrutinized government action that appears to endorse or reject a religious position, or to compel or coerce support for a religious belief or practice. *See, e.g., Lee v. Weisman*, 505 U.S. 577, 587-88 (1992); *Grand Rapids School Dist. v. Ball*, 473 U.S. 373, 389-90 (1985); *Lynch v. Donnelly*, 465 U.S. 668, 690-94 (1984) (O'Connor, J., concurring). In adopting a view of physician-assisted suicide that is sponsored by, *e.g.*, the Roman Catholic Church, but not accepted by, *e.g.*, the Unitarian Universalist Association, the Washington and New York assisted-suicide bans, in essence, endorse one religious viewpoint to the exclusion of all others. Such endorsement of religious views runs contrary to the "purposes" and "reasons" behind the Establishment Clause.



The statutorily imposed requirement that the terminally ill endure their suffering, rather than terminate it by physician-assisted suicide, conveys an endorsement of the belief, not shared by all religions, that suffering is religiously significant and appropriate. More specifically, the states' efforts to draw a line between "passive" methods of hastening death (which they concede are permissible) and "active" methods (which they argue are impermissible) does nothing less than legalize one religious view and criminalize others.[19] This effectively "prescribe[s] what shall be orthodox" with respect to voluntarily hastened death, and compels the terminally ill "to confess by . . . [the] act [of their continued existence in the face of suffering] their faith therein." *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642 (1943).

To be sure, this Court has held that statutes do not violate the Establishment Clause simply because they reflect "traditionalist" values. *See Harris v. McRae*, 448 U.S. 297, 319-20 (1980). But bans against assisted suicide are not merely reflections of a "traditionalist" view. To the contrary, laws against suicide stem from the incorporation into the English common law of the canon

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[19] *See, e.g.*, New York Br. 16-18 (attempting to justify New York's ban on physician-assisted suicide by reference to the "difference between action and inaction"); United States Catholic Conference *et al.* Br. 18 n.11 (suggesting that *actively* hastening one's own death is a sin); Union of Orthodox Jewish Congregations & Rabbinical Council Br. 7-8 (interpreting Jewish law as forbidding *active* methods of hastening death but allowing passive methods in some circumstances); Evangelical Lutheran Church Br. 3 (arguing that the distinction between active and passive methods of hastening death is firmly grounded "within the limits of Christian charity"); Brief for the United States and New York Catholic Conferences as *amici curiae* 25 n.63, *Quill v. Vacco*, 80 F.3d 716 (2d Cir. 1996) (No. 95-7028) (arguing that the "ethical difference between action and inaction "has long been acknowledged by the Christian moral tradition" and that the "refusal of a technique which is already in use . . . is not the equivalent of [the sin of] suicide"). *See generally* Campbell, 2 Kennedy Inst. of Ethics J. at 258-63 (table of "Religious Views on the Right to Die").

law of the Roman Catholic Church. This should cause these bans on assisted suicide to raise Establishment Clause concerns. In this regard, a summary of the origins of suicide laws may be useful to the Court.

"There is nothing in the Old Testament which can clearly be understood as offering explicit judgment on the ancient Judaic view of suicide"; nor is there any "offering in the New Testament to suggest a condemnation of suicide." Neely, *The Right to Self-Directed Death: Reconsidering an Ancient Proscription,* 36 Cath. Law. 111, 121 (1995). In fact, "[i]n the Bible, five people are reported to have ended their own lives (I Samuel 31, II Samuel 17, I Kings 16 and Matthew 27), and the fact of their action is simply reported with no moral judgement implied; at no point is condemnation expressed for their having done so." G. Larue, *Playing God, supra* at 420-22 (quoting Rev. Sallierae Henderson).

Among early Christians, in fact, suicide was not particularly unusual. Because "the supreme duty in this life was to avoid the sin which would result in eternal damnation," the early Christians considered it permissible to commit suicide rather than risk condemnation. Neely, 36 Cath. Law. at 121. Indeed, given that martyrdom at the hands of infidels was an especially prized end, "fanatical Christians" — in particular, a sect known as the Circumcelliones — would invite their own death by "taunt[ing] their Roman persecutors into acts of violence." *Id.* at 122; *see also* G. Williams, *The Sanctity of Life and the Criminal Law* 254-55 (1957); *Compassion in Dying v. Washington,* 79 F.3d 790, 808 (9th Cir.) (*en banc*), *cert. granted,* 117 S. Ct. 37 (1996).

Augustine, who opposed the Circumcelliones' excesses in the name of religion, became "the chief architect" of the Roman Catholic view that suicide is encompassed by the Commandment against killing. G. Williams, *supra* at 255. "St. Augustine argued that committing suicide was a 'detestable and damnable wickedness' and was able to help turn the tide of public opinion" against suicide. *Compassion in Dying,* 79 F.3d at 808 (citing Marzen *et al., Suicide: A Constitutional Right?,* 24 Duq. L. Rev. 1, 27 (1985)). Augustine's views on suicide were eventually



incorporated into the canon law of the Catholic Church. *See* N. St. John-Stevas, *Life, Death and the Law* 233, 249 (1961) (citing 5 A. Neander, *General History of the Christian Religion and Church* 141 (Joseph Torrey trans. 1865)). In the year 673, the Council of Hereford adopted the Roman Catholic canon law, including its prohibition against suicide, into England. *See* G. Williams, *supra* at 257. King Edgar formalized this prohibition in the year 967. *See* Neely, 36 Cath. Law. at 128.

As a result, the prohibition against suicide became part of the common law of England as it emerged around the Twelfth Century. *Id.; see also Compassion in Dying,* 79 F.3d at 845 (Beezer, J., dissenting) ("Between the decline of the Roman Empire and the rise of the Common Law, ecclesiastical law was a dominant force in the English legal order."). One of the first English law treatises, written most likely between 1220 and 1260, explained that suicide was criminalized because of the Augustinian rationale: "In the same way, in which a person may commit a felony by killing another, so he may commit a felony by killing himself, which felony indeed is said to be committed against himself." 2 H. de Bracton, *De Legibus et Consuetudinibus Angliae* 505 (Sir Travers Twiss ed. 1879). Similarly, the Court of King's Bench, writing in 1562, explained the rationale for the legal prohibition on suicide. Central to the court's analysis was the view that suicide was an "offence . . . against God" as well as "against nature" and "against the King." The Court explained that suicide was "against God" because "it is a breach of His commandment, *thou shalt not kill*; and to kill himself, by which act he kills in presumption his own soul, is a greater offence than to kill another." *Hales v. Petit,* 75 Eng. Rep. 387, 400 (1562).[20]

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[20] These three reasons were exactly the same ones articulated by St. Thomas Aquinas in his theological treatise, *Summa Theologica:* "[I]t is altogether unlawful to kill oneself for three reasons . . . [first,] suicide is contrary to the inclination of nature . . . [second,] every man is part of the community . . . by killing himself he injures the community . . . [third,] because life is God's gift to man . . . whoever takes his own

Later English legal scholars echoed the same ecclesiastical underpinnings for the laws against suicide. Sir Matthew Hale explained that the prohibition upon suicide was grounded in principal part upon religious objections: "No man hath the absolute interest of himself but: 1. God almighty hath an interest and propriety in him, and therefore self-murder is a sin against God." I M. Hale, *Historia Placitorum Coronae* *411-12 (1736). Blackstone, too, explicitly recognized that this aspect of the common law was bottomed on "religiou[s]" reasons: "[T]he law of England wisely *and religiously* considers, that no man hath a power to destroy life, but by commission from God." 4 W. Blackstone, *Commentaries* ch. 14, *189 (1765) (emphasis added). Blackstone thus called suicide a "spiritual" "offence," in that the person committing suicide was guilty of "invading the prerogative of the Almighty, and rushing into [H]is immediate presence uncalled for." *Id.*

This reasoning, although an accurate reflection of the long-standing bases for the common law's prohibitions against suicide, is contrary to our American constitutional tradition. In light of our long tradition of religious liberty, arguments that suicide is an "offence . . . against God," which "invade[s] the prerogative of the Almighty," would never be a proper basis for law in this country. Indeed, this Court's Establishment Clause jurisprudence prohibits enactments that have such a religious "purpose." *See, e.g., Epperson v. Arkansas,* 393 U.S. 97, 103 (1968); *Lemon v. Kurtzman,* 403 U.S. at 612-13; *Wallace v. Jaffree,* 472 U.S. 38, 56 (1985); *Edwards v. Aguilard,* 482 U.S. 578, 592-93 (1987).

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Under this Court's prevailing substantive due process analysis — the one articulated by the second Justice Harlan — physician-

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life, sins against God." St. Thomas Aquinas, *Summa Theologica* II-II, q. 64, art. 5 (Fathers of the English Dominican Province eds., vol. 2, pp. 1465 *et seq.*, 1947). *See also Compassion in Dying v. Washington,* 79 F.3d at 845-46 (Beezer, J., dissenting); Marzen *et al., Suicide: A Constitutional Right,* 24 Duq. L. Rev. 1, 29 (1985).



assisted suicide is a core constitutional liberty, which derives both from the specific guarantees (in particular, the religious liberty clauses of the First Amendment) and the generalized aspects of "liberty" protected by the Due Process Clause. A terminally ill individual's decision to hasten death is inextricably intertwined with notions of personhood, identity, and theology; *amici* can imagine few, if any, personal decisions more appropriate to be called a protected "liberty" under the Due Process Clause.

## II. THE ASSERTED INTERESTS OF WASHINGTON AND NEW YORK CANNOT JUSTIFY THE TOTAL PROHIBITION UPON THE EXERCISE OF A CORE CONSTITUTIONALLY PROTECTED LIBERTY

As Justice Harlan suggested in *Poe* and as this Court agreed in *Casey*, "certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgement." *Poe,* 367 U.S. at 543 (Harlan, J., dissenting); *Casey*, 505 U.S. at 848-49. In the event that the Court concludes, as *amici* urge in Section I above, that physician-assisted suicide occupies a preferred place on the "rational continuum" of liberty, a "particularly careful scrutiny," *i.e.*, "strict scrutiny," should apply to the Washington and New York bans on assisted suicide. *Casey,* 505 U.S. at 848, 850-51; *Poe,* 367 U.S. at 543 (Harlan, J., dissenting). Strict scrutiny, of course, requires that a statute be the least restrictive means necessary to achieve a compelling governmental interest. Neither statute can withstand this analysis.

*First,* like the contraception statute at issue in *Poe,* but unlike the abortion statute at issue in *Casey,* these statutes operate as total bans on the asserted liberty interest. Thus, there is no argument available to the states that any lesser standard of scrutiny should apply. *See generally* Dorf, *Incidental Burdens on Fundamental Rights,* 109 Harv. L. Rev. 1176, 1219-32 (1996). As this Court has recognized in *Casey* and in so many other cases, statutes with "incidental effect[s]" on fundamental rights generally pass muster; "undue burden[s]" on fundamental liberty rights are always impermissible under the Due Process Clause. *Casey,* 505 U.S. at 874. The criminalization of assisted suicide

— which constitutes a total ban on that liberty — certainly cannot be categorized as having an "incidental effect" on the liberty right. *See, e.g., Loving v. Virginia*, 388 U.S. 1, 12 (1967) (statute making interracial marriage a felony).

*Second*, the interests that Washington and New York have proffered in support of their bans on assisted suicide simply do not withstand the "particularly careful scrutiny" mandated by *Casey* and by Justice Harlan's opinion in *Poe*. While the section of Washington's brief purporting to articulate that state's interests in banning assisted suicide (Washington Br. 33-38) is not a model of clarity, the state appears to be asserting two interests: (1) an unqualified interest in the preservation of human life, and (2) "'preventing deaths that occur as a result of errors in medical or legal judgment.'" Washington Br. 33, 34. New York appears to offer essentially the same two interests as justifications for its statute. New York Br. 19-32.

The states' first asserted interest — the preservation of life — is easily dealt with. This Court in *Casey* held that "a State's interest in the protection of life falls short of justifying any plenary override of individual liberty claims." *Casey*, 505 U.S. at 857 (citing *Cruzan*, 497 U.S. at 278). The State's interest in preserving life in this case is appropriately seen as less weighty than the interest asserted in *Casey*, where the state's interest (which was "in the protection of *potential* life," 505 U.S. at 871 (emphasis added)) aimed to protect a potential life that was in no position to protect itself. Here, the state laws under consideration purport to protect the lives of competent adults, who are fully capable of protecting their own lives (until the terminal illness runs its course) but who have chosen, for religious and personal reasons, not to do so.[21]

[21] Moreover, it is questionable whether the states' asserted interest in preserving the life of a terminally ill person who prefers to die can properly be deemed compelling, given that the states have not sought to enforce such an interest with respect to the refusal or termination of medical treatment. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993) ("'a law cannot be regarded as protecting an interest 'of the highest order' . . . when it leaves appreciable damage to that supposedly vital interest unprohibited'") (citations omitted); *Cruzan v. Director, Missouri Dep't of Health*, 497 U.S. 261, 296, 298 (1990) (Scalia, J., concurring) (arguing that the scope of the state's interest in protecting life cannot vary with the means chosen to hasten death).



The second interest — preventing error and abuse in decisions regarding death — fares no better. Even assuming that the asserted interest in preventing erroneous or abusive deaths constitutes a "compelling" state interest, neither state has satisfied its burden of establishing that a total ban on physician-assisted suicide is the least restrictive means for achieving that interest. If anything, the risk of error and abuse in physician-assisted suicide is *lower* than it is in other end-of-life decisions that the states *do not* prohibit. With physician-assisted suicide, a competent terminally ill individual is solely responsible for administering the life-ending prescription, and the individual may change his or her mind. The decision is thus voluntary and personal.

By contrast, the discontinuation of treatment according to an advanced directive or to the decision of an appointed surrogate, *cf. Cruzan*, 497 U.S. at 283, carries substantially greater risks of error and abuse, principally because the decision to discontinue treatment, and the discontinuation itself, are not simultaneous events. Yet, both Washington and New York allow this latter means of ending life, with appropriate procedural safeguards — thus confirming that less restrictive means exist for furthering the states' asserted interests in preventing error and abuse. Indeed, *Cruzan* seems already to have established that less-restrictive procedural regulations, such as Missouri's "clear and convincing" standard of proof for the withdrawal of life-sustaining treatment, can satisfy a state's interests, however compelling, in assuring

that a patient is allowed to make "an informed and voluntary choice." *Cruzan*, 497 U.S. at 280.[22]

In sum, the absolute bans on this fundamental liberty are unconstitutionally burdensome; they are far more restrictive than necessary to serve either of the asserted state interests.

## CONCLUSION

The judgment of the Court of Appeals for the Second Circuit in No. 95-1858, and the judgment of the Court of Appeals for the Ninth Circuit in No. 96-110, should be affirmed.

Respectfully submitted,

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[22] It has also been recognized that any risk that the terminally ill individual is coerced into choosing to hasten death is minimized where the choice is made only after extensive consultation with family, friends, health care professionals, and clergy. *See* R. Westley, *When It's Right to Die: Conflicting Voices, Difficult Choices* 168-69 (1995); *see also* G. Larue, *Playing God*, *supra* at 25-26 (noting the variety of unofficial "countercontrols" that will assure that the decision is informed and voluntary). Moreover, in order to bolster these informal checks on coercion, the states may regulate physician-assisted suicide to assure competency and voluntariness. *Cf. Cruzan*, 497 U.S. at 280.

# APPENDIX

## APPENDIX

## STATEMENTS OF INTEREST OF *AMICI CURIAE*

**AMERICANS FOR RELIGIOUS LIBERTY** is a nonprofit public interest educational organization dedicated to defending religious liberty, freedom of conscience, and the constitutional principle of separation of church and state. Americans for Religious Liberty has participated as an *amicus* in other cases in this Court that have implicated these concerns. Americans for Religious Liberty believes that bans on physician-assisted suicide conflict with fundamental First Amendment guarantees.

**THE AMERICAN HUMANIST ASSOCIATION**, founded in 1941, has members and local affiliates throughout the United States. The Association has adopted a formal statement on physician-assisted suicide that recognizes an individual's right to exercise control over the manner and time of dying subject to adequate safeguards assuring that such actions are wholly voluntary and clinically appropriate. Consonant with the principles of autonomy, dignity, and freedom of conscience underlying the First and Fourteenth Amendments, the Association believes that the right to hasten death with the aid of a physician should be protected by this Court.

**THE BOARD OF DIRECTORS OF THE SOCIETY FOR HUMANISTIC JUDAISM** oversees an organization that reflects the beliefs of approximately one-fifth of the world's Jewish population, and is dedicated to the promotion of Jewish and humanistic ideals, including human dignity, integrity, tolerance, and equal treatment. In view of its respect for the autonomy and dignity of the individual and its compassion for those who are suffering, the Board of Directors believes that a terminally ill person's decision to end his or her suffering should be honored. The Board of Directors thus affirms that competent adults should have the right to make responsible decisions regarding the most profound and private aspects of their own lives — including the choice to hasten death in the face of terminal illness — free from government interference and subject to regulation only to the extent necessary to provide appropriate safeguards.

**THE CATHAR CHURCH**, which has approximately 25,000 members, is Evangelical in basic doctrine and is in many respects similar to the Amish, Brethren, and Mennonite families of churches. Throughout its long history, the Cathar Church has taught that people desiring to end their suffering by hastening death are entitled to dignity, sympathy, and support, and that their decision is a matter of individual conscience to be judged only by God. The Cathar Church believes that medical practitioners should be able to provide aid in dying, subject to guidelines to guard against abuse, and thus supports a constitutionally protected right to physician-assisted suicide.

**THE CONGRESS OF SECULAR JEWISH ORGANIZATIONS** is composed of several independent organizations that seek to forge a Jewish identity that is grounded in contemporary life and is committed to the social values of justice, peace, and community responsibility. Consistent with this purpose, the Congress has taken the position that a competent, terminally ill adult who is gripped by unbearable suffering should have the right to assistance in dying, subject to adequate safeguards that ensure that the decision is informed, rational, and voluntary.

**THE EPISCOPAL DIOCESE OF NEWARK** is one of the largest Episcopal dioceses in the United States, representing 123 congregations and more than 40,000 Episcopalians. The Diocese believes that choices about death are matters of individual conscience informed by scripture, tradition, and reason. Accordingly, the Diocese has resolved that suicide may be a morally appropriate choice for Christians who are suffering from a terminal illness characterized by persistent and irremediable suffering and who voluntarily make an informed decision to hasten death. The Diocese has further resolved that assisting another in accomplishing voluntary death under these circumstances may be an equally moral choice.

**THE UNITARIAN UNIVERSALIST ASSOCIATION** is a religious association of more than 1,000 congregations in the United States and Canada. In 1988, the Association adopted a resolution affirming the right to self-determination in dying and supporting



the elimination of civil and criminal penalties against those who, under proper safeguards, assist terminally ill patients in selecting the time and manner of their own deaths.

**DOCTOR ROBERT S. ALLEY**, Emeritus Professor of Humanities, University of Richmond.

**THE REVEREND JOHN R. BROOKE** of Belmont, California (United Church of Christ).

**THE REVEREND DOCTOR ROBERT McAFEE BROWN** (Presbyterian), Emeritus Professor of Theology and Ethics, Pacific School of Religion.

**RABBI DENISE L. EGER** of West Hollywood, California (Reform Judaism).

**THE REVEREND DOCTOR LAWRENCE FALKOWSKI** of West Orange, New Jersey (Episcopalian).

**THE REVEREND DUANE HENRY FICKEISEN** of Palo Alto, California (Unitarian Universalist).

**THE REVEREND FRANK A. HALL** of Westport, Connecticut (Unitarian Universalist).

**THE REVEREND GLEN A. HOLMAN** of Sacramento, California (Christian Church (Disciples of Christ)).

**DOCTOR GERALD LARUE**, Emeritus Professor of Religion, Adjunct Professor of Gerontology, University of Southern California.

**DOCTOR DANIEL C. MAGUIRE**, Professor of Theology, Marquette University.

**BISHOP CALVIN D. McCONNELL** (retired) of Lake Osweto, Oregon (United Methodist).

**THE REVEREND ROBERT H. MENEILLY** of Prairie Village, Kansas (Presbyterian).

**THE REVEREND DOCTOR RALPH M. MERO, JR.** of Harvard, Massachusetts (Unitarian Universalist).

**THE REVEREND DOCTOR DONALD S. MILLER** of San Mateo, California (Episcopalian).

**THE REVEREND GALE DAVIS MORRIS** of Milwaukee, Wisconsin (Episcopalian).

**THE REVEREND DOUGLAS I. NORRIS** of Merced, California (United Methodist).

**THE REVEREND BRUCE G. PARKER** (retired) of Gig Harbor, Washington (United Methodist).

**THE REVEREND C. WILLIAM PEARSON** of Southfield, Michigan (Evangelical Lutheran in America).

**THE REVEREND DAVID A. PETTEE** of Berkeley, California (Unitarian Universalist).

**THE REVEREND DOCTOR KENNETH W. PHIFER** of Ann Arbor, Michigan (Unitarian Universalist).

**THE REVEREND HERBERT F. SCHMIDT** of Palo Alto, California (Lutheran).

**THE REVEREND ANDREW SHORT** of Austin, Texas (Presbyterian).

**THE REVEREND DOCTOR PAUL D. SIMMONS** (Baptist), Director, Center for Ethics, Adjunct Professor, Medical Ethics, University of Louisville and Louisville Presbyterian Seminary.

**BISHOP JOHN S. SPONG** of Newark, New Jersey (Episcopalian).

**THE REVEREND DEBORAH STREETER** of Carmel California (United Church of Christ).

**THE REVEREND DOCTOR JOHN SWOMLEY**, Emeritus Professor of Christian Ethics, St. Paul School of Theology.

**THE REVEREND JUDITH CLYMER WELLES** of Palo Alto, California (Unitarian Universalist).



**THE REVEREND DOCTOR RAY L. WELLES** of Boulder Creek, California (United Church of Christ).

**DOCTOR RICHARD WESTLEY**, Professor of Philosophy, Loyola University, Chicago.